

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 14568 of the Ward 5 Coalition, pursuant to Section 8102 and 8206 of the Zoning Regulations, (11 DCMR 3200.2 and 3105.1), from a decision of the Zoning Administrator dated December 23, 1986, in construing Certificate of Occupancy B-26019, dated November 8, 1960, to authorize use as a convent for terminally ill patients, in violation of Section 8104 (11 DCMR 3203.7 and 3203.8), in an R-1-B District at premises 2800 Otis Street, N.E., (Parcels 167/64, 167/65, 167/67, and 167/68).

FINAL DATE OF ORDER: April 20, 1988  
DECISION DATE: May 4, 1988

ORDER

Appeal No. 14568 is before the Board on the timely motion of the Respondent for rehearing and reconsideration of the final order herein dated April 20, 1988. Having considered the motion and opposition thereto, the Board is persuaded that the final decision on this appeal is correct as entered, and that a further hearing would not be likely to produce evidence that would aid in the Board's consideration of the case.

The proffered new evidence and basis for reconsideration relate to the respondent's rationale for determining that the current use of the facility at 2800 Otis Street is not as a nursing home, convalescent facility, or community residence facility under D.C. Law 5-48.

As set forth in Conclusion of Law Numbered 11 in the Final Order of the Board,

The current definitions in the health care regulations do not apply to or aid in the interpretation of the terms "philanthropic or eleemosynary institution" or "convalescent or nursing home."

For that reason, the new evidence would not be relevant to the legal standards by which the Board must decide this case. There is no reason for the Board to reconsider or rehear the case in order to "correct" or clarify an interpretation of the terms of the Health Regulations. The Board has not interpreted the meaning of any provision of

the Health Regulations. The terms which the Board interpreted in its decision are former provisions of the Zoning Regulations. The Board is well within its statutory authority, responsibility, and area of expertise when it rules on the meaning of such provisions.

It should be noted that the decision of the Board in this Appeal is based upon an interpretation of definitions of particular uses, as to which the Board is allowed no room for discretion. In particular, the Board does not have before it, and has not decided, either the benefits of the facility to the District or its positive or negative impact on the neighborhood or the community at large. The Board would have the authority to consider such issues only if the intervenor, Associated Catholic Charities, filed an application to permit the use of the premises as a community residence facility or other use under the current provisions of the Zoning Regulations.

The public interest strongly supports an evaluation of the use through a hearing process enabling the Board to consider the program goals and objectives of the District and to evaluate the impact of the facility on the neighborhood. In order to encourage such a process, and to prevent potential injury to the program of the Intervenor or the District which would clearly outweigh any adverse impact that a brief stay would have on appellants, the Board has determined to stay the further operation of Order No. 14568, subject to conditions. Those conditions will protect the interests of all parties.

Based upon the foregoing, the Board hereby ORDERS that the motion of respondent for rehearing and reconsideration is DENIED; and the operation of Final Order No. 14568 dated April 20, 1988, is hereby STAYED, effective immediately and through June 1, 1988, subject to the following conditions:

1. No later than May 31, 1988, Intervenor, Associated Catholic Charities, or its authorized agent, shall file with the Board an appropriate application for a special exception to use the premises as a community residence facility.
2. Respondent is requested to take reasonable and timely action to facilitate the process of preparation for filing an application.
3. The staff of the Board shall take reasonable action, consistent with the rules of the Board, to facilitate the timely filing of the application.
4. No later than May 31, 1988, Parties may file written submissions of their views on whether the stay should be extended until a final decision by

the Board on the prospective application for a special exception.

5. At its public meeting on June 1, 1988, the Board will determine whether to extend the stay during the pendency of any application for a special exception.

VOTE: 5-0 (Lindsley Williams, William F. McIntosh, Paula L. Jewell, Carrie L. Thornhill, and Charles R. Norris to deny rehearing or reconsideration, and to grant a stay.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: MAY 20 1988

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

14568appeal/BJW29